U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JAN 10 2013 OFFICE: VERMONT SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

203(b)(2)
B5

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in business and as a member of the professions holding an advanced degree. The petitioner, a "multi-service provider," seeks to employ the beneficiary as a "chief executive." The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief and background materials.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director found that the petitioner qualifies as a member of the professions holding an advanced degree. The AAO will revisit this finding later in this decision. The director's sole ground for denial concerned the finding that the petitioner had not established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on December 6, 2005. president of the petitioning entity, provided the following description of the petitioning company:

> Our corporation is a multi-service provider which is more commonly known as:
>
> 1. IRS e-file provider

2. Tax Preparer/Consultant
3. Life & Health Insurance Agent
4. Specialist in preparation of forms in bankruptcy, divorce, and incorporation
5. Notary Public and Mobile Notary Signing agent for real estate loans and transactions with various companies all over the United States
6. Print, fax and copy center
7. FedEx Authorized Ship Center
8. HP-Compaq Partner & Reseller
9. MCI Solution Provider

[redacted] stated elsewhere that the petitioner is also "affiliated with . . . XEROX as a Reseller."

The initial filing included Form ETA-750B, Statement of Qualifications of Alien, showing the following employment history for the beneficiary:

1/1987-3/1991
1/1992-12/1997
12/1998-9/2004 [redacted]

The beneficiary claimed no experience as a chief executive, and indeed no experience in business. Nevertheless, [redacted] stated that the beneficiary "proved . . . on the basis of satisfactory evidence that she possesses exceptional abilities in business."

Under the heading "Beneficiary's current performance record justifies projections of future benefit to the nation," [redacted] described the beneficiary's roles with the four partner companies named above. For example, [redacted] stated:

> The beneficiary's business affiliation with HP-COMPAQ is a significant undertaking. . . . The strategy is to offer products, services and solutions that are high tech, low cost and deliver the best customer experience. Teamwork with HP enables the beneficiary to do business in more than 170 countries by engaging in e-commerce and global sales of inkjet, all-in-one and single function printers, mono and color laser printers, large format printing, scanners, print servers, and ink and laser supplies.
>
> Her brilliant leadership prowess is more enhanced, inspired and motivated by being affiliated with Xerox as a reseller. Her ability to lead and succeed is a dominating factor which is in accord with the recognition of women executives in business. Xerox is No. 8 on NAFE's annual ranking, recognizing the company's inclusive workplace culture and women in leadership roles.

(Emphasis in original; evidentiary citations omitted.) These assertions say nothing of the beneficiary's individual achievements or contributions. Instead, they amount to the assertion that the petitioner's business relationship with HP-Compaq, Xerox, and other companies is, on its face, grounds for

approving the national interest waiver. Whatever the nature of the "inclusive workplace culture" at Xerox, the beneficiary is not a Xerox employee and she has never held a "leadership role" there. Rather, she works for a company that sells products manufactured by Xerox.

noted that the petitioner is a notary public, registered with the State of New York. explained the functions of a notary public, and discussed the "Notary Public Code of Professional Responsibility." There exists no blanket waiver for notaries public; the title does not presumptively qualify the beneficiary for the national interest waiver. At best, general assertions about the role of a notary public address only the "substantial intrinsic merit" prong of the *NYSDOT* national interest test.

Turning to the petitioning entity, asserted that the company "has integrated the best aspects of the Old and New Economies," and that "[t]he Multi-Service Industry is critically important to our economy and society." claimed that the company "has increased its network to encompass virtually all of the United States. In addition, it has been extended to some 210 countries encompassing 99 percent of the world's economic activity." In stating that the company "has been extended to some 210 countries," apparently meant that, as a business partner with several international corporations, the petitioner shares in the global reach of those corporations. however, established no persuasive chain of logic or evidence to show that the petitioner, itself, is a significant player in the international economy. Business arrangements with major corporations do not mean that the petitioner is also a major corporation.

claimed that the petitioner "generates significant economic benefits for the nation's economy as an employer." On Part 5, line 2 of Form I-140, the petitioner listed its "Current Number of Employees" as "2," those two employees apparently being and the beneficiary.

cited various statistics about businesses owned and/or managed by women. These figures, however, are generalized. It does not follow that the beneficiary's gender entitles her to a national interest waiver.

On March 3, 2006, the director issued a request for evidence, instructing the petitioner to submit documentation to meet the requirements set forth in *NYSDOT*. The director stated: "All of the qualifications and duties that you have described in your cover letter appear to be possible to articulate on a request for labor certification. The impact of a single individual . . . who works in the specific area described, appears to be so diluted at the national level as to be negligible."

In response, stated that the "petitioner has satisfied the job offer requirement by offering the position to American workers." The petitioner submitted copies of job advertisements that the petitioner claimed to have run in various newspapers in early April 2006. The petitioner does not meet the job offer requirement by running advertisements. Rather, the USCIS regulation at 8 C.F.R. § 204.5(k)(4)(i) states:

> Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A

> designation (if applicable), or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program.

Furthermore, the petitioner made no effort to meet the job offer requirement until after it received the request for evidence several months after the petition's filing date. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

With respect to the beneficiary's eligibility for the national interest waiver, stated:

> Education is the gateway to opportunity and the foundation of a knowledge-based, innovation-driven economy. . . .
>
> [The beneficiary's] continuous exertion of efforts to pursue more educational training and retraining . . . provide the nation's workforce with better career options, opportunities for advancement and the ability to compete in a global economy.

The petitioner submitted copies of the beneficiary's various teaching certificates. The petitioner had previously listed ten functions that it claimed to perform as a "multi-service provider." None of those functions involved providing job training to United States workers. in his initial statement, described the company's activities in depth and devoted several pages to a discussion of the duties of a notary public, but did not indicate that the beneficiary's duties would include educational functions.

The petitioner submitted a copy of a from the naming the beneficiary as an of its "[i]n recognition of outstanding service and commitment to The certificate, on its face, does not address the beneficiary's eligibility for the waiver or the petitioner's efforts to satisfy the guidelines set forth in *NYSDOT*.

The only other information from the is an electronic mail message from its chairman, The message is dated May 16, 2006, five months after the petition's filing date. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). Therefore, subsequent events cannot cause a previously ineligible alien to become eligible after the filing date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The director denied the petition on July 3, 2006. The director found that the petitioner failed to establish "that the benefit of the beneficiary's work would be national in scope, [or] that the national interest of the United States would be adversely affected if labor certification were required for this particular beneficiary."

On appeal, states:

> The advanced degree of the beneficiary must be considered at a higher stage of development or progress than other similar aliens who are ahead of her time or considered to be radical up to the degrees as qualifications were awarded by schools and colleges, and such education was exercised, manifested and implemented through successful and extensive experience of more than 25 years.

The petitioner submitted no evidence that the beneficiary's education experience were "ahead of her time" or "radical."

stated that the director's decision "is bound to be reversed on appeal as it is reflective of discrimination, coupled with an erroneous and angry disagreement with the normal course of proceedings." failed to elaborate on these points. There is nothing self-evidently discriminatory or "angry" about the director's decision.

noted that the petitioner had filed an earlier petition on the beneficiary's behalf, which the director had denied for abandonment. The director had then dismissed the petitioner's motion to reopen the abandoned decision. protests that the director's refusal to reopen the petition violates the "cruel and unusual punishment" clause of the Eighth Amendment to the Constitution. The present appeal concerns the petitioner's second petition, filed in 2005. The director followed due process in handling the petitioner's first petition from 2004, and the present appeal does not present the petitioner with a "back door" to continue to pursue the earlier petition.

observes that the *NYSDOT* decision, issued in 1998, "might be applicable to other cases as it happened before the 9/11 event in New York City but not in the case of the appellant. Most of the legal regulations were changed or repealed in accordance with the changing needs of the times." does not cite any relevant change in the statute or regulations; he merely makes the general assertion that the terrorist attacks of September 11, 2001, led to changes in the law. As it happens, there has been no change to section 203(b)(2) of the Act or the regulations at 8 C.F.R. § 204.5(k). *NYSDOT* remains in force as a binding precedent decision.

asserts that the director "should have considered the appellant's position in relation to the new set of regulations concerning businesses and entrepreneurship, recently passed by the United States Congress and signed by President Bush." did not identify "the new set of regulations." As noted previously, there has been no statutory change to the provision under which the petitioner filed the present petition.

makes several unsupported claims about the petitioning company, asserting that it holds a "leading position . . . toward advancement in research, business development and encouragement of entrepreneurship," and that the company "is fueled by scientific research." contends: "The beneficiary is assigned to design the Program of [the petitioning company]. This Program is a collection of projects that are directed towards a common goal for our services to have an immediate effect on the entire Nation." Much of the appeal concerns a discussion of "the Program."

asserts: "This concept will be implemented by the beneficiary as soon as THIS APPEAL IS APPROVED" (emphasis in original). The record does not show that the petitioner has had such an effect to date, and it cannot suffice for the petitioner to claim its intention to have such an effect at some point in the future, once the beneficiary has developed a "Program" that is not yet in effect. As the director already advised the petitioner, *NYSDOT* requires a past record of achievement with some degree of influence on the field as a whole. The petitioner offers only the promise that the beneficiary will begin to have that influence after the petition is approved.

A heavily emphasized aspect of "the Program" that discusses concerns video conferencing technology. The initial submission did not mention this technology at all; the response to the request for evidence included new documentation in this regard, dated after the filing of the petition. (Documentation from January 2006 indicates that the petitioner is a "distributor" and "reseller" for The petitioner has, in several ways, modified its stated business (and the beneficiary's stated duties) after the filing date. The petitioner now emphasizes worker training, video conferencing technology, and economic globalization, whereas the original description of the petitioner's business activity was:

1. IRS e-file provider
2. Tax Preparer/Consultant
3. Life & Health Insurance Agent
4. Specialist in preparation of forms in bankruptcy, divorce, and incorporation
5. Notary Public and Mobile Notary Signing agent for real estate loans and transactions with various companies all over the United States
6. Print, fax and copy center
7. FedEx Authorized Ship Center
8. HP-Compaq Partner & Reseller
9. MCI Solution Provider

asserts that the director's refusal to consider the materials violate Rule 401 of the Federal Rules of Evidence, which defines "relevant evidence" as being "of consequence to the determination of the action." The Federal Rules of Evidence apply to judicial rather than administrative proceedings. With respect to the consideration of the evidence, a benefit request shall be denied where evidence submitted in response to a request for evidence does not establish filing eligibility at the time the benefit request was filed. 8 C.F.R. § 103.2(b)(12). The January 2006 arrangement did not exist at the time of filing a month earlier, and therefore cannot retroactively establish eligibility as of the filing date.

asserts that the petitioner "has tested the beneficiary in the form of an Aptitude battery," which revealed that "[t]he beneficiary exhibits an extraordinary and exceptional motivation" and a wide range of skills that her position demands. also asserts that the beneficiary has the "capability to perform more or less than 25 different labor positions." then contends that the labor certification process is ill equipped to handle the beneficiary's position. Even assuming that the beneficiary's position requires a rare and eclectic blend of skills and abilities that few United States

workers can match, it does not necessarily follow that it is in the national interest of the United States to waive the job offer requirement in this proceeding.

As it stands, the petitioner has not shown that the beneficiary had any business experience at all before mid-2003 when she helped to establish the petitioning company. Before that time, she was a school teacher, a court stenographer, and a clerical worker in doctors' offices. enthusiastically praises the beneficiary's brilliance in the world of business, but there is simply no evidence to support or justify his claims in this regard. Intentions are not influence. claims that the petitioner "has been created [*sic*] the strategy program for marketing where the appellant will cover every local market in the United States of America," but nothing in the record shows that, at the time of filing, the petitioner had implemented this program or seen any success in the area.

To qualify for the national interest waiver, the petitioner must show that the alien's past record justifies projections of future benefit to the national interest. The petitioner has not done so. Instead, the petitioner points to the company's future plans (which, themselves, appear to be constantly changing and expanding) and asserts that only the beneficiary is capable of implementing those plans. Eligibility for the waiver cannot rest on this foundation of speculation and conjecture. The AAO will affirm the director's finding that the petitioner has not established that the beneficiary qualifies for the waiver.

The AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petitioner had claimed that the beneficiary qualifies for classification both as a member of the professions holding an advanced degree and as an alien of exceptional ability in business. In this instance, the director did not discuss the beneficiary's eligibility for the underlying immigrant classification except to state "the beneficiary is the holder of an advanced degree." The standard for eligibility, however, is not simply holding an advanced degree.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines a "profession" as one of the occupations listed in section **101(a)(32)** of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. correctly observed that the beneficiary holds "advanced professional degrees in Education and Law," but did not show that her intended duties, as set forth in the initial filing, require either degree. The degree or major must be academically appropriate to the profession for which petitioned. *Matter of Katigbak*, 14 I&N Dec. 46. The petitioner has not established that the beneficiary qualifies for classification as a member of the professions holding an advanced degree.

With respect to the claim that the beneficiary qualifies for classification as an alien of exceptional ability, the USCIS regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which

an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. The petitioner claims that the petitioner has met all six criteria.

> *An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(A)

The record shows that the petitioner holds a law degree and a bachelor's degree in English education. The petitioner did not explain how either of these degrees relates to the beneficiary's claimed area of exceptional ability. Therefore, the petitioner has not satisfied this requirement.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.* 8 C.F.R. § 204.5(k)(3)(ii)(B)

The petitioner submitted employer letters as follows:

- A May 5, 1990 letter from [redacted] stating that the beneficiary "had been a faculty member in the High School Department . . . for five (5) school years" from 1979 to 1982, and from 1986 to 1988, teaching "such subjects as English I, Social Studies I and Social Studies II."
- A January 6, 1986 letter from [redacted] stating that the beneficiary had worked there "as a Secretary." The letter provided no hiring date.
- A February 16, 1989 "certification" stating that the beneficiary "is a duly appointed [redacted]." Again, the letter showed no hiring date.

The letters did not show any employment experience in the beneficiary's intended occupation with the petitioning entity. The petitioner did not submit the evidence required under the regulation.

> *A license to practice the profession or certification for a particular profession or occupation.* 8 C.F.R. § 204.5(k)(3)(ii)(C)

The petitioner submitted copies of licenses and certificates permitting the beneficiary to work as a notary public, insurance agent, insurance producer and teacher. At least some of these licenses and certifications pertain to the beneficiary's intended work, and therefore satisfy the plain wording of the regulation.

> *Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(D)

Documentation from the New York State Department of Taxation and Finance indicate that the beneficiary reported an adjusted gross income (AGI) of $82,936 in 2003. [redacted] claimed that

additional tax documents show an AGI of $139,481 in 2004, but the submitted documents for that year show only what the beneficiary received in tax refunds, not her AGI. The documents do not establish the source(s) of this income, and therefore they do not show how much of the above amounts the beneficiary received as salary or remuneration, rather than through other means (such as investment income). Furthermore, the petitioner submitted no evidence to establish that the beneficiary's earnings as an executive demonstrate exceptional ability.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E)

cited the beneficiary's "membership and affiliation with [five specified] professional associations and international business associations." The only entity that appears to constitute a professional association is the The other four named entities are all business corporations: MCI, FedEx, HP-Compaq and Xerox. The petitioner's previously described business arrangements with those companies (such as its status as a "FedEx Authorized Ship Center") are not memberships in professional associations.

The petitioner has documented the beneficiary's membership in only one professional association, which does not meet the regulation's plain-wording requirement of membership in "associations." The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B), in contrast, refers to "letter(s)" from "employer(s)," meaning one or more letters from one or more employers. The regulation under discussion here refers to "associations" rather than "association(s)," and therefore the AAO construes the regulation to require membership in more than one association to meet the plain wording of the regulation. The petitioner's initial submission did not meet this requirement.

The petitioner's response to the request for evidence included evidence of the beneficiary's associate membership in the The record contains no evidence that the beneficiary held this membership as of the petition's filing date, or that her class of membership ("associate") requires employment or credentials in any particular profession or other occupation. Therefore, the petitioner did not show that the beneficiary's associate membership in the constituted membership in a professional association as of the petition's filing date.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F)

Under the altered heading "significant contributions to the nation and recognition for achievement," listed only one entry, specifically the beneficiary's "establishment, foundation, incorporation, and structural foundation of [the petitioning company]." The evidence that the petitioner cited under this category (collectively "Exhibit 25") establish the petitioner's existence as a corporation, but do not show that the beneficiary has received recognition for achievements and significant contributions to the industry or field from peers, governmental entities, or professional or business organizations. The petitioner has not met this regulatory requirement.

The AAO acknowledges the beneficiary's receipt of the [redacted] from the [redacted] but the certificate makes no mention of the beneficiary's business activities, and there is nothing in the record to show the [redacted] awarded the certificate in recognition for achievements and significant contributions to the beneficiary's industry or field. Instead, the certificate includes a vague reference to [redacted] The AAO notes that the [redacted] is a partisan political organization rather than a government entity. Furthermore, as noted previously, the beneficiary appears to have received this certificate several months after the petition's filing date.

The petitioner's evidence, on its face, addresses only one of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). Only aliens whose achievements have garnered "a degree of expertise significantly above that ordinarily encountered" are eligible for classification as aliens of exceptional ability. 8 C.F.R. § 204.5(k)(2). In this instance, the petitioner did not facially satisfy at least three of the regulatory standards at 8 C.F.R. § 204.5(k)(3)(ii). The petitioner has not shown that the beneficiary qualifies for classification as an alien of exceptional ability in business.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for dismissal. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.